IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDCITION

WRIT PETITION NO. 2411 OF 2004

1. M/s. Biochem Pharmaceutical)
Industries, Biochem House, L.B.S.)
Marg, Vikhroli (West), Mumbai)
- 400 083.)
)
2. Mr. Mayank J. Shah)
Partner, Aldum Building,)
1st Dhobi Talao, P.O. Box 2217,)
Mumbai - 400 002.)
)
3. Mr. Jaswant Shah,)
Partner, Aldun Building,)
1st Dhobi Talao, P.O. Box 2217)
Mumbai - 400 002)
)
4. Mr. Shreyans J. Shah,)
Partner, Aldun Building,)
1st Dhobi Talao, P.O. Box 2217,)
Mumbai - 400 002.) ..... Petitioners.

V/s

1. Biochem Pharmaceutical)
Industries Employees Union,)
Sharifa Chawl, Room No.5,)

Opp. Gandhi Parekh, L.B.S. Marg,)
Ghatkopar (West), Mumbai -)
400 086.)
)
2. Mr. P.K. Chavare,)
President, Industrial Court,)
Bandra (East), Mumbai - 400 051)

Mr. P.C. Pavaskar for the Petitioners.

Mr. R.D. Bhat for Respondent No.1.

CORAM: V.M. KANADE, J.

DATE : 16TH APRIL, 2007

ORAL JDUGEMTNT:

1. Heard the learned Counsel appearing on behalf of the Petitioners and the learned Counsel appearing on behalf of Respondent No.1.

2. By this Petition, Petitioner - Company is challenging the order passed by the Respondent No.2 - President, Industrial Court in Complaint (ULP) No.1140 of 1999 whereby the Industrial Court held that the Petitioner had engaged in

unfair labour practice within the meaning of Items 3, 9 and 10 of Schedule IV to the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 [For short “the MRTU & PULP Act”] and directed the Petitioner to cease and desist from engaging in unfair labour practice.

3. Petitioner No.1 is a Partnership Concern registered under the Partnership Act and a deemed Private Limited Company. Petitioner - Company is engaged in producing pharmaceutical drugs including life saving drugs and it is a pharmaceutical industry. Its first unit was started in 1973. Initially, manufacturing activity was carried out at Ahmedabad. However, later on, the said unit was closed and manufacturing activity was carried at Mumbai & Daman. A notice was issued by the Petitioner - Company dated 21/10/1999 in which the Petitioner - Company expressed its intention of shifting its entire manufacturing operations which were carried on at Vikhroli Unit and it also expressed its intention of shifting to Ahmedabad. After the said notice was issued, the Respondent No.1 filed a complaint of unfair labour practice under Items 3, 9 and 10 of Schedule IV to the

MRTU & PULP Act. Both the parties led evidence and the Tribunal held that the Petitioner - Company had committed unfair labour practice. Against that, the Petitioners preferred this Petition in this Court which was admitted on 06/09/2004. During the pendency of the Petition, it appears that the Petitioner - Company closed the entire factory and sold the premises and also demolished the factory building. An affidavit in reply has been filed by Mr. Pravin Kotian, General Secretary of Respondent No.1 - Union in which he has stated these facts. It is further stated that after the Petition was filed in this Court, the Petitioner - Company purchased land at Taloja, District Raigad for a sum of Rs 10 crores and it was agreed that Respondent No.1 - Union would co-operate the Petitioner - Company in shifting production facilities to Taloja. However, the Petitioner - Company sold the said premises for a sum of Rs 19 crores. Thereafter, the Company approached MIDC for allotment of land admeasuring 4.5 acres at Ambernath and while applying for allotment of the said land, it was specifically stated that the Company required the land in order to continue the employment of the existing employees of the

Company and, thereafter, MIDC allotted the land to the Petitioner - Company and it is in possession of the said land since last six months. It is stated in the affidavit in reply that Union and its members are willing to work at Ambernath. It is further stated that the settlement had been arrived at between the parties dated 15/5/2003 in which as per clause 23(e), it is agreed, inter alia, that the employees are liable to be transferred from one location to another within the city limits and its territories and that this settlement was signed prior to judgment dated 14/01/2004 which is impugned in this Petition. Further, the said settlement was converted into an award in Reference (IT) No. 4 of 2001 which is pending in the Industrial Court at Mumbai. It is contended without prejudice to the rights and contentions of the Respondent No.1 that shifting the factory from Vikhroli amounted to closure within the meaning of section 2(cc) of the Industrial Disputes Act, 1947. These facts are not controverted by the Petitioner - Company. An affidavit in reply has been filed by the Petitioner - Company in which it has admitted that the factory premises alongwith the land at Ahmedabad had to be sold by the Petitioner - Company as the Petitioner were

required to pay huge amount by way of taxes without utilising the said facilities. The fact that the land at Taloja also had been sold has been admitted. It is also admitted that the Petitioner - Company had purchased land from Ambernath MIDC.

4. In my view, in view of the subsequent events which are brought on record and which are admitted by the Petitioner - Company in its affidavit in respect of the sale of land and factory at Ahmedabad, Writ Petition has become infructuous. The learned Counsel appearing on behalf of the Petitioner - Company urged that shifting of the factory from Vikhroli to Ahmedabad would not amount to unfair labour practice within the meaning of Items 3, 9 and 10 of Schedule IV to the said MRTU & PULP Act. Mr. Bhat, the learned Counsel appearing on behalf of Respondent No.1, however, submitted that the said issue has now become merely an academic issue since notice of transfer to Ahemedabad itself was not possible since Ahmedabad factory and land was sold by the Petitioner. He submitted that, therefore, it is not necessary to decide this issue as it is only an academic

issue.

5. In view of these subsequent events, therefore, the Writ Petition is rendered infructuous. It is, however, clarified that all contentions raised by the Petitioner - Company in respect of the issue involved in this Petition are kept open and, in the event, the Petitioner - Company intends to shift its premises to another place out side the territory of Mumbai the workers would be allowed to issue a notice and agitate the same before the competent court and all contentions raised by both the parties will be kept open and the Industrial Court will not be influenced by any observations made by the President, Industrial Court in the impugned order.

6. With these observations, Writ Petition is disposed of. Rule is discharged with no order as to costs.

(V. M. KANADE, J.)